(1)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

CHHATTISGARH

Single Bench

Second Appeal. No. 42 / 2006.

APPELLANT

PLAINTIFF

RAM RATAN YADAV, S/o Bodhi Yadav, Aged about 63 years, R/o Village BhardaKala, Post Patwari Circle no. 82, Revenue Inspector Circle, Gunderdehi, Tahsil Gunderdehi, Distrcit Durg, Chhattisgarh.

P.R. No. 197/06
Presented by: Shri P. Sahu
dated 24/11/06

VERSUS

RESPONDENTS

DEFENDANTS

1. State of Chhattisgarh, Through Collcetor, Office situated at Collectrate Durg, Chhattisagarh.

2. S.K.Thawait, Sub Divisional Officer, Patan, Durg, Chhattisagarh. (It be now read over as Sub Divisional Officer, Patan,Durg.) Office situated at Durg, (C.G.).

3. Tahsildhar, Gunderdehi, Office situated at Gunderdehi, Tahsil Gunderdehi, Distrcit Durg, (C.G.).

4. Sarpanch, GramPanchayat, BhardaKala.

CERTIFIED COPY
24.1.06
BILASPUR

(2)

(It be now read over as
GramPanchayat, BhardaKala,
through Sarpanch.)
Block and Tahsil Gunderdehi,
Distrcit. Durg, (C.G.)

MEMORANDUM OF SECOND APPEAL UNDER SECTION 100
OF CIVIL PROCEDURE CODE.

of Second

XI-HC-22

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक S.A. No. 42 / सन् 2006

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	24.04.2006 Shri N.S.Dhurandar, learned counsel for the appellant. Shri C.D.Vaswani, learned G.A. for the State/respondent No.1. Heard on admission. The instant Second Appeal has been preferred by the appellant against the judgment & decree dated 29.07.2005 passed in Civil Appeal No. 12 A/2003 against the judgment and decree dated 13.07.98 passed by learned Second Civil Judge Class-II, Durg in Civil Appeal No. 118 A/1995 and by which learned Additions District Judge, Durg confirmed the judgment of the trial Court dismissing the suit of the appellant. Case of the plaintiff before the trial court was that the plaintiff is in possession of the suit house situated over the suit land and *patta* of the suit land was given by the Tahsildar, Gunderdehi vide his order dated 13.07.90 in Revenue Case No. 41 A/68/89-90. It is the further case of the appellant that in fact, the suit house was taken by him on rent and from there he was running his hotel and subsequently in the year 1980-81, he purchased the same from the son of one Gondul Sao. On objection from the Sarpanch of the village, eviction proceedings were initiated by the Tahsildar against the appellant. However, the suit land was settled in favour of the appellant vide order dated 13.07.90. When the appellant started construction over the suit land, order of stay was passed by the Tahsildar, Gunderdehi and thereafter he was again permitted to undertake construction by the Tahsildar. However, prohibitory proceedings were initiated against the appellant by the Sub	

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मामला क्रमांक S.A. No. 42 सन् 200 C

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Divisional Officer and the construction was stopped and criminal offence was registered against the appellant and his family members. In the aforesaid circumstances, appellant filed the above suit against the defendants for declaration of title and perpetual injunction.

The suit preferred by the appellant was dismissed by the trial Court by recording a finding that the order dated 13.07.90, by which *patta* has been granted was passed in contravention of the provisions of Section 244 of the Chhattisgarh Land Revenue Code as the land in question was "*Prachalit Aabadi land*" and the same land cannot be given on *patta* to the appellant in the absence of express consent by the concerned panchayat and therefore no relief much less the decree of declaration of title and perpetual injunction could be granted to the appellant. On the similar finding, the appeal preferred by the appellant was also dismissed.

Learned counsel for the appellant submits that the suit land was settled in favour of the appellant as per the provisions of *Dakhal Rahit Bhoomi Adhiniyam*, 1984 under which the Tahsildar was competent to settle the possession of the encroacher and both the Courts were not justified in dismissing the suit.

I have heard learned counsel for the appellant.

However, by the order dated 13.07.90, the Tahsildar granted *patta* of the suit land to the appellant. In the said order, the land has been described as *Aabadi* land. *Dakhal Rahit Bhoomi Adhiniyam*, 1984 refers to the settlement of cultivable agricultural land and therefore the Courts

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

below have rightly held that that the suit land which is admittedly "*Prachalit Aabadi land*" could not be settled under the Act of 1984.

In the aforesaid circumstances, I am of the considered opinion that the Courts below have not committed any illegality by dismissing the suit of the plaintiff by recording a finding that the settlement of *Aabadi* land in favour of the appellant, on the basis of which the suit has been filed was in contravention of Section 244 of the Chhattisgarh Land Revenue Code and there is no substantial question of law involved in the in the instant appeal and the appeal is devoid of merits. Accordingly the appeal is dismissed at the admission stage itself.

Sd/-
Dhirendra Mishra
Judge